IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1365 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? - **No.**

2 To be referred to the Reporter or not ? - **No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? - **No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**

5 Whether it is to be circulated to the civil judge ? - **No.**

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BHARAT @ DHABHO SASIKANT PATEL - Applicant(s)

Versus

DEPUTY COMMISSIONER OF POLICE & 1 - Respondent(s)

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Appearance :

MR SATYAM Y CHHAYA for Applicant(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 01/12/2005

ORAL JUDGMENT

1.Bharat @ Dhabho Sasikant Patel, petitioner has filed this petition under Article 226 of the Constitution of India for quashing and setting aside the order dated

29/6/2005 passed by the respondent no.1 under the provisions of Bombay Police Act, externing the petitioner and further be pleased to quash and set aside the order passed by respondent no.2 dated 11/8/2005 by which the appellate authority has confirmed the order of externment in this behalf. Petition was filed on 4/10/2005.

2.My brother Mr.Justice A.S.Dave, has issued rule on 11/10/2005 which was returnable and therefore, this matter has came up for hearing to this Court.

3.Heard, Mr.S.Y.Chhaya, learned advocate for the petitioner in this behalf. He has stated that the Assistant Commissioner of Police has issued notice on 11/5/2004 to the petitioner as to why he should not be externed from Ahmedabad, Ahmedabad (Rural), Gandhinagar, for a period of two years. The petitioner has appeared before the authority on 25/5/2004 and submitted his reply denying all the allegations. Petitioner examined witnesses in his defence.

4.Respondent no.1, the Deputy Commissioner of Police has passed order of externment externing the petitioner

from Ahmedabad, Gandhinagar, Kheda and Mehsana for a period of two years on 29/10/2005.

5. Being aggrieved and dissatisfied with the same, the petitioner preferred an appeal against the order of externment before the respondent no.2 i.e. The Secretary, Home Department, Sachivalaya, Gandhinagar. The respondent no.2 pleased to dismiss the appeal of the petitioner on 11/8/2005.

6. Though there are several grounds, learned advocate for the petitioner desires to urge only one ground that the order of authority is bad in law as the authority originally passed the order after unavoidable and unjustified delay in this behalf. In support of the same, he has relied upon the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another, in Special Criminal Application No.1451 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 1/12/2005.

7. On the other hand, Mr.L.R.Pujari, learned APP stated that in this case, as the authority was busy, the authority could not pass the order. Except that, no other reasons have been stated by the learned APP. No

affidavit has been filed in this behalf showing as to why there is a delay in passing the order.

8. In view of the aforesaid reasons, Special Criminal Application No.1365 is allowed. Order of externment dated 29/6/2005 is quashed and set aside and order dated 11/8/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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